American
FIBER SYSTEMS
Corporate Offices:
100 Meridian Centre
Suite 250
Rochester, NY 14618-3979

Phone: (585) 340-5400 ext. 129
Fax: (585) 756-1966
info@americanfibersystems.com
bfrankiewich@americanfibersystems.com

October 25, 2005
Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th. Street, S.W.
Washington, DC 20554

Re: SBC Communications Inc. and AT&T Corp., WC Docket No. 05-65
Applications for Approval of Transfer of Control

Verizon Communications Inc. and MCI, Inc., WC Docket No. 05-75
Applications for Approval of Transfer of Control

Dear Ms. Dortch:

In previous comments submitted to the Commission in the above-referenced proceedings numerous parties have expressed their concerns that the approval of the proposed mergers would have a significantly adverse impact on the telecommunications marketplace in the United States by seriously reducing and restricting future competition. American Fiber Systems, Inc ("AFS") respectfully asks that the Commission give serious consideration to these concerns and, equally importantly, look ahead to the sort of safe guards that should be attached to the mergers if they are ultimately approved.

Through this letter, AFS wishes to suggest six merger conditions relative to pole and conduit access which if adopted by the Commission would, in our opinion, mitigate some of the more damaging aspects of anticompetitive conduct and would enable competitors to deploy their own wire-line networks to compete with Verizon and SBC. AFS aserts that competition in the telecommunications marketplace will survive only if competitors are granted access to SBC and Verizon poles and conduits that -- in terms of both speed and cost -- at least approximates that enjoyed by the RBOC's. We further believe that the merger conditions recommended in this letter offer a means to address the harm that would result from the conversion of competitive wireline facilities owned by AT&T and MCI to monopoly facilities owned by the RBOCs.

After listing the merger conditions that AFS proposes, this letter will describe each condition in greater detail and explain how the condition, if imposed by the Commission, would ameliorate the problem.

PROPOSED MERGER CONDITIONS REGARDING ACCESS TO POLES AND CONDUITS:

1. Verizon and SBC should agree to allow use of boxing and extension arms where: (1) such techniques would render unnecessary a pole replacement or rearrangement of electric facilities; and (2) facilities on the pole are accessible by ladder or bucket truck.

2. Verizon and SBC should commit to a 45-day deadline for the completion of make-ready work to reflect the efficiencies afforded by boxing and extension arms.

3. Verizon and SBC should agree to (a) allow a competitor to search their records and survey their manholes to determine availability of conduit or, alternatively, (b) allow the competitor to observe as they conduct such searches and surveys and commit to a cap on their charges for such work.

4. Verizon and SBC should agree to allow competitors to hire RBOC-approved contractors to perform field surveys and make-ready work (aerial as well as underground).

5. Verizon and SBC should agree to efficiently share building-entry conduits with CLEC's.

6. Verizon and SBC should agree to allow RBOC-approved contractors hired by CLEC's to work in manholes without RBOC supervision.

Merger Condition 1. Verizon and SBC should agree to allow use of boxing and extension arms where: (1) such techniques would render unnecessary a pole replacement or rearrangement of electric facilities; and (2) facilities on the pole are accessible by ladder or bucket truck.

Problem:

According to the National Electric Safety Code, at least 12 inches must separate adjoining communications cables on a pole (unless the cable owners agree to less). Generally, utilities prefer that third parties attaching facilities to poles achieve the 12-inch clearance vertically. When less than 12 inches of contiguous vertical space remains within the communications space on a pole, either existing facilities on the pole can be rearranged to create

such space (in a process called "make-ready work") or, if such rearrangement cannot produce the desired 12 contiguous, empty vertical inches, then the pole can be replaced with a larger pole (entailing the transfer of all existing facilities from the old pole to the new pole). Make-ready work and pole replacements can cost many thousands of dollars per pole and take significant periods of time to complete.

The construction techniques of boxing and extension arms present alternatives to both make-ready work and pole replacement. Under these techniques, the 12-inch required separation is achieved diagonally rather than vertically. In boxing, the diagonal separation is achieved by placing the new cable on the "field side" of the pole, opposite the majority of cables, which are on the "street side", and at least 4 vertical inches away from any adjacent communications cable. An extension arm allows placement of the cable on the street side of the pole by securing the cable usually 12 to 18 horizontal inches away from the pole.

Until approximately 1996 pole owners, including RBOC's, used (and allowed CATV companies to use) boxing and extension arms to reduce the time and expense involved in preparing utility poles for attachment of cables. Soon after passage of the 1996 Act certain pole owners, including NYNEX and Bell Atlantic, prohibited their use. This prohibition against boxing or extension arms, although supposedly applied "non-discriminately" to all pole occupants, had a significant adverse effect only on those companies who had yet to deploy facilities in an area. RBOC's and cable companies, which are largely ubiquitous, generally were able readily to deploy new cables simply by overlashing them to their existing support strand. Only the new entrants to the market absolutely needed to find new pole space, which the pole owners successfully made much more scarce through their prohibitions against boxing and extension arms.

The anticompetitive motivation behind the ban on boxing and extension arms is evidenced by the fact that now that Verizon is seeking to expeditiously deploy fiber-optic cable, it is making frequent use of both boxing and extension arms for its own installations

Proposed Solution:

Based on a precedent set down by an Order of the New York State Public Service Commission , Verizon and SBC should be required, as a condition to merger approvals, to permit use of boxing or extension arms where such techniques would avoid a pole replacement or make-ready work involving electric facilities, where the facilities on the pole can safely be reached by ladder or bucket truck, and if the pole owner has previously allowed use of the technique. (*Order Adopting Policy Statement on Pole Attachments,* Issued and Effective August 6, 2004, Case 03-M-0432, at p. 5-6 (hereinafter, "*NY Order on Pole Attachments*") (See Attachment). The criterion that the pole must be reachable by ladder or bucket truck responds to a utility argument that boxing and extension arms can impede climbing of a pole. (This may be an unnecessarily modest proposal, because it appears that Verizon may be using boxing or extension arms wherever practically any make-ready work at all would otherwise have to be

Thus, Verizon may be using these techniques to avoid practically all expense and all delay caused by the need to have make-ready work performed, while the proposed condition would simply ensure that competitors will be able to use boxing and extension arms to avoid the more expensive and time-consuming forms of make-ready work.)

The New York PSC also allows the use of extension arms to make permanent attachments when make-ready costs are exorbitant ("*NY Order on Pole Attachments*", p.7), and when use of the arms allows for safe and reliable attachments (id at p. 6).

Merger Condition 2. Verizon and SBC should commit to a 45-day deadline for the completion of make-ready work to reflect the efficiencies afforded by boxing and extension arms.

Problem:

SBC (and it is our understanding, Verizon) typically refuse to commit to complete make-ready work sooner than four to six months after the CLEC has paid for the work. However when RBOC's decide to install their own new facilities they act much more quickly, thereby achieving a critical advantage in the competition to sign up customers for fiber-delivered services.

Proposed Solution:

Verizon and SBC should be required to complete make-ready work within 45 days of receiving payment for the work. This not only would help level the competitive playing field but would also be warranted by the fact that, when boxing and extension arms are used in place of pole replacements and heavy make-ready work, the time needed to complete the remaining work is greatly reduced. The New York State PSC recently issued an order that both provided for the use of boxing and extension arms and also mandated that make-ready work (both on poles and also in underground conduit) be completed within 45 days of the utility's receipt of payment for such work ("*NY Order on Pole Attachments*", at p. 11 of Appendix A).

Merger Condition 3. Verizon and SBC should agree to (a) allow a competitor to search their records and survey their manholes to determine availability of underground conduit or, alternatively, (b) allow the competitor to observe as the they conduct such searches and surveys and commit to a cap on their charges for such work.

Problem:

The RBOCs have imposed unnecessary delays and costs on competitors' deployment of fiber-optic networks by insisting that the RBOC personnel -- outside the presence of CLEC

representatives -- perform the record searches and field inspections necessary to determine availability of conduit requested by CLEC's. One consequence of excluding CLEC participation is issuance of incorrect reports regarding availability, resulting in turn in delay and additional cost (a report of unavailability triggers need for a new application and new application fees, and a false report of availability delays the search for actually available conduit while the CLEC schedules, deploys, and pays work crews to pursue fiber deployment in conduit space that doesn't exist).

The RBOC's reasons for insisting that it perform the conduit record searches and manhole surveys without CLEC participation are unpersuasive. It has claimed that CLECs may not look at its conduit records and that even RBOC-approved contractors may not physically survey its manholes because the identity of the other conduit occupants thereby would be revealed. Such information is not secret when facilities are aerial, however, and AFS is aware of no reason underground facilities should be treated differently. Moreover, when AFS's contractors enter the manholes to install AFS's cable, they are able to see what other companies have facilities in those holes.

Proposed Solution:

In order to avoid the effects of unintentional misrepresentations by RBOC personnel, to avoid the charges imposed for RBOC activities, and to avoid the delays inherent in waiting for RBOC's to schedule workers to perform such activities, CLEC's should be guaranteed the right independently to examine RBOC conduit records (at the locations where they are maintained) and also to conduct the manhole inspections that confirm the accuracy of the record information. As precedent, the Commission can once more look to the New York PSC which has declared that "Attachers shall have access to conduit records, with any necessary redactions, at the Owner's office." ("*NY Order on Pole Attachments*", Attachment A, p. 11).

It is AFS' understanding that, except in Ohio, SBC permits CLEC's to perform both conduit record searches and to perform the physical manhole inspection confirming the written records. However AFS believes that SBC requires payment of an effective rate of $40 per hour for a CLEC to view its conduit records and requires that an SBC "inspector" be present during manhole inspections performed by the CLEC (at a rate of $95.00 per hour as indicated in Merger Condition "6", following). A requirement that an RBOC "inspector" be present before a CLEC may perform work in RBOC facilities is unnecessary and can impose on competitors significant and unnecessary delays and costs.

Alternatively, if RBOC's are allowed to prohibit CLEC's from conducting their own record searches and manhole surveys, then -- in order to protect CLEC's from the delays and costs inflicted by inaccurate RBOC reports regarding conduit availability -- CLEC's should be allowed to be present at the searches and surveys to help ensure accuracy.

Further, to protect CLEC's from arbitrary and excessive charges for record searches and manhole surveys, Verizon and SBC should commit to a firm cap on their charges. Based on a review of such charges, AFS recommends that the cap be set at no more than $200.

That employing a standard fee for record searches and manhole surveys is workable is demonstrated by SBC Ameritech's use of such fees. That company imposes uniform fees of:

> $400 for a record search of all manholes and conduits associated with a central office (a minimal per-unit charge to a CLEC that installs any significant amount of underground plant); and
>
> $400 per manhole for a physical survey of the manhole, which is in addition to a $200 application fee that covers an unlimited number of manholes.

Merger Condition 4. <u>Verizon and SBC should agree to allow competitors to hire RBOC-approved contractors to perform field surveys and make-ready work (aerial as well as underground).</u>

<u>Problem:</u>

The RBOC's can gain competitive advantage by delaying the performance of requested field surveys and make-ready work. When pressed, they often plead lack of available manpower. Without a means to remedy the delay directly, a CLEC is faced with the need to bring a complaint to the regulator. It is impractical, however, for a CLEC to formally challenge every delay caused by a pole or conduit owner, and even a successful challenge is a loss for the CLEC and a win for the facility owner because the owner will have succeeded in delaying the CLEC and forcing it to use more of its relatively limited resources in its appeal to the regulator.

<u>Proposed Solution:</u>

Verizon and SBC should commit to allow competitors to hire utility-approved contractors to perform field surveys, make-ready determinations, and make-ready work if they, themselves, cannot or will not meet the relevant legal deadlines. The New York PSC's Order regarding access to utility poles and conduits takes this approach, providing that, if a pole owner is unable to complete a pole or conduit field survey (using its own employees or a contractor) in a timely manner, the license applicant is entitled to hire a contractor (from among a list of utility-approved contractors) to perform the survey. Similarly, license applicants are entitled to use approved contractors to perform aerial make-ready work and to prepare conduits for occupation by installing innerduct if the pole or conduit owner would otherwise be unable to meet the deadline for completing such make-ready work (45 days after the licensee pays the make-ready estimate). ("*NY Order on Pole Attachments*", p. 3.) It must be noted however that the New York PSC requires utilities to hire contractors, if necessary, to rod and rope conduit or to complete

conduit repairs in a timely manner but does not require them to allow contractors hired by license applicants to perform such work.)

Merger Condition 5. Verizon and SBC should agree to efficiently share building-entry conduits with CLEC's.

Problem:

Entry-points into commercial buildings typically are limited to several conduits placed through the foundation wall of the building. Landlords are extremely reluctant to permit the drilling of additional holes in building foundations to accommodate more conduits, so access to the existing conduit is critical to a competitor's ability to serve the building occupants. Verizon's and SBC's policies, however, are not geared to maximize use of the entry space.

Verizon and SBC often populate building-entry conduits with cables but no innerduct and assert the position that no CLEC cable may occupy the same, undifferentiated space with an RBOC cable. It is not uncommon for an RBOC -- without using innerducts -- to place one or a few cables in each of several conduits entering a building, thereby leaving much free conduit space that is denied to CLEC's. Because building owners typically are reluctant to permit the drilling of additional holes in the foundation walls of their buildings, the RBOC practice of precluding competitive facilities by placing no innerducts in entry conduit and prohibiting the installation of competitive cables that might directly contact RBOC cables effectively prevents competitors from reaching customers in many buildings or, at the very least, forces the CLEC to undergo a lengthy process of seeking to persuade the landlord to allow drilling through the building foundation.

If an entry conduit contains innerduct and the innerduct is fully occupied, the RBOC's regularly reject CLEC requests for permission to pull their fiber cable through the interstices of the innerducts (typically, the center space between three innerducts is ideal). Such placement does not endanger existing fiber cables within the conduit, because these are protected by the innerduct in which they are contained.

Proposed Solution:

Verizon and SBC should commit that, where either has placed cable in a building-entry conduit without using innerduct and sufficient space remains unoccupied, it will either: (1) permit a CLEC to install its own cable next to the RBOC cable; or (2) install one or more innderducts in the conduit and allow the CLEC to place its cable within such innderduct (the CLEC would then pay rent to the RBOC for using the innerduct).

Verizon and SBC each should also commit that, where its conduit into a building contain innerducts and all the innerducts are occupied, it will allow a competitor to install its fiber cable into the building by pulling it in between the innerducts.

Merger Condition 6. Verizon and SBC should agree to allow RBOC-approved contractors hired by CLEC's to work in manholes without RBOC supervision.

Problem:

It is AFS' understanding that Verizon (previously "NYNEX" in New York) formerly permitted licensees to use approved contractors to install innerduct and cable without supervision and subject only to an inspection designed to ensure the facilities were placed in the assigned locations (the exact equivalent of the post-construction inspection of aerial installations). Verizon, however, now prohibits Verizon-approved contractors hired by competitors from working in its manholes without constant supervision by a Verizon "inspector". (The requirement that an inspector be present does not apply to work *on* a manhole itself, such as drilling the wall to install additional conduit, because that work is done by the RBOC. The inspector requirement applies only to work within the manhole necessary to install CLEC facilities in the manhole or in conduit accessible from the manhole.) This prohibition has imposed a serious and unjustifiable competitive handicap, as outlined below.

a. An RBOC prohibition against work in manholes without the presence of an RBOC supervisor adds time to competitive network deployment.

A CLEC may wish to work 12 hours a day or even through the night, but an RBOC requirement that an inspector be present typically reduces the workday to between 5 and 7 hours total.

Moreover, conditioning work in a manhole on the presence of an inspector allows the RBOC to shut down or delay work on CLEC facilities by simply making the inspector unavailable. Late notice of unavailability imposes additional costs by forcing the CLEC to pay its crew for down-time.

b. The inspector requirement is unnecessary and one-sided.

It is AFS' understanding that Verizon explains its new inspector requirement by citing a need to protect its own and other companies' facilities from damage caused by its approved contractors, although AFS is unaware of any history demonstrating the existence of such damage. If such a threat in fact exists, then CLEC's have an equal or greater reason to observe RBOC work in manholes containing their facilities, because RBOC's do not notify CLEC occupants prior to working in a manhole and RBOC employees or contractors therefore may experience a sense of anonymity that can lead to less careful treatment of competitors' facilities. Nevertheless, Verizon does not permit its competitors to observe the installation of RBOC facilities in manholes or to charge for such supervision and inspection.

That the purported concern that RBOC-approved contractors will damage other companies' facilities absent RBOC inspectors is merely a ruse to justify imposing unnecessary

costs and delays on competitors is strongly suggested by the process under which Con Edison Communications (in the New York City metropolitan area) and Empire City Subway (Verizon's subsidiary that owns most of the telecommunications manholes and conduit in New York City) apparently operate in which both allow approved contractors to perform work for CLECs and cable television companies in their manholes without supervision. If no inspectors are needed to supervise work in New York City manholes, which likely contain the greatest quantity and density of facilities in manholes anywhere, it is unpersuasive to assert that inspectors are needed in all other parts of the country.

Proposed Solution:

Verizon and SBC should commit to allow approved contractors hired by competitors to install innerduct and cable in manholes without supervision by RBOC officials.

To summarize the proposed mergers will irreparably harm both residential and corporate consumers by negating the benefits that years of telecommunications competition (albeit competition purchased at the cost of daily struggles against entrenched and intransigent RBOC bureaucracies) have brought to the marketplace. However, should the Commission approve these mergers it must adopt stringent safeguards to protect the few remaining vestiges of competition. The conditions proposed herein are a means to achieve this limited objective.

Sincerely,

Bruce T. Frankiewich
Vice President of Legal and Regulatory Affairs

Attachment

ATTACHMENT

New York State Public Service Commission

Order Adopting Policy Statement on Pole Attachments
Case 03-M-0432
August 6, 2004

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on June 2, 2004

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
Leonard A. Weiss
Neal N. Galvin

CASE 03-M-0432 -- Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues.

ORDER ADOPTING POLICY STATEMENT ON POLE ATTACHMENTS

(Issued and Effective August 6, 2004)

BY THE COMMISSION:

BACKGROUND

On March 27, 2003, we initiated a generic proceeding for the purpose of identifying and addressing unresolved issues concerning pole attachments.[1] Our overarching goal was to clarify and where reasonable streamline the process by which attachments to utility poles are made in order to promote the deployment of competitive telecommunications networks. We directed that the following issues, at a minimum, be addressed using a collaborative process: attachment/occupancy practices; access to poles, ducts and conduits; make-ready costs; use of outside contractors and cost control; and limitations on particular attachment techniques.

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[1] Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Instituting Proceeding (issued and effective March 27, 2003).

Collaborative meetings were held during May through July 2003. Parties submitted a joint document listing areas of agreement and disagreement on July 9, 2003 and recommendations on July 25, 2003. After review of the submissions, staff issued proposed recommendations for further comment on September 24, 2003. The parties submitted comments on the recommendations on October 23, 2003. Staff submitted Final Recommendations in February 2004 and parties submitted comments in March 2004.[2]

The parties were able to reach agreement on some issues. Those resolutions together with our decisions on the remaining unresolved issues are reflected in the attached Policy Statement on Pole Attachments (Appendix A) which we are adopting. The Policy Statement on Pole Attachments should govern the relationship between attachers and utilities, unless they mutually agree otherwise, on a prospective basis.

DISCUSSION

The major issues of parties' disagreement and our resolution of them are set out herein.

Timelines

The parties disagree about timelines for applications, preconstruction surveys and make-ready work. Throughout the proceedings, Attachers have argued that

[2] Comments were submitted by: The Cable Telecommunications Association of New York, Inc.; AT&T Communications of New York Inc.; Fibertech Networks, LLC (Attachers); the International Brotherhood of Electrical Workers, Local 97 and Utility Workers Union of America, AFL-CIO, Local 1-2 (Unions), the United Telecom Council; Pole Owners including: Verizon New York Inc.; Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Frontier, a Citizens Communications Company; New York State Electric & Gas Corporation, an Energy East Company; Niagara Mohawk Power Corporation, a National Grid Company; Orange & Rockland Utilities, Inc.; Rochester Gas & Electric Corporation, an Energy East Company; and the New York State Telecommunications Association (Owners or Utilities).

being able to attach to poles in a timely fashion is their greatest concern. Without timely attachments, they are unable to serve new customers and will lose business. Pole Owners, on the other hand, point out that if they are required to meet short deadlines for completing surveys and make-ready work, Attacher's work will take priority over their own utility-related work. Owners claim that the deadlines recommended by staff are unreasonably short.

Under the Policy Statement, preconstruction surveys must be done 45 days after a complete application has been filed with the Pole Owner. After conducting a survey of the poles, the Owner must send a make-ready work estimate to the Attacher within 14 days of completing the survey. Attachers have 14 days from receipt of the estimate to accept and pay for the make-ready work. Owners must perform the make-ready work within 45 days of receiving payment from the Attacher.

For survey work, if an Owner is unable to meet these deadlines, the Attacher may hire an outside contractor to do the survey or perform make-ready work, if the contractor is approved by the Owner.

Some Owners and the Unions object to this procedure, arguing that their collective bargaining agreements may not allow hiring outside contractors. Since time is the critical factor in allowing Attachers to serve new customers, it is reasonable to require the utilities either to have an adequate number of their own workers available to do the requested work, to hire outside contractors themselves to do the work, or to allow Attachers to hire approved outside contractors.

Make-ready Estimates and Charges

Make-ready estimates of the costs of any changes to the pole required for an attachment, including rearrangement of facilities, must be provided to the Attacher within 14 days of completion of the survey. The Attacher may question whether certain make-ready work is necessary. The schedule of charges (unit costs) that the utility uses for make-ready work are only subject to change and review annually.

Make-ready estimates and work have been the subject of some disputes. The parties disagree about whether or not make-ready estimates should be binding on the

parties. An estimate is binding for the work identified. If additional work is required which changes the original estimate the change should be reviewed by the Attacher, who may decide whether or not to go forward with the work.

Since prompt attachments are critical to an Attacher's business, the Utility shall notify the Attacher that make-ready work is complete within three business days of completion.

Rearrangement of Facilities on a Pole and the "But For" Rule

If a legal attachment is made to a pole in compliance with safety standards, the legal Attacher should not be required to pay for rearrangement of its facilities for subsequent attachments. Utilities favor retention of the "but for" rule. The rule requires new attachers to pay the full costs of making utility poles ready for their facilities. Under this rule, the attachers remain liable for subsequent relocation, modification, and replacement costs that would not be incurred but for their presence on the pole. Only during the two-year period following the initial attachment are they not subject to any such additional charges.[3] However, in fairness to all Attachers, if an attachment is legal when made, subsequent rearrangements should be paid for by the Attacher that requires the rearrangement and not previous Attachers. Therefore, we will no longer use the "but for" rule in assigning pole modification costs.

Drop Poles

Drop poles are poles placed between the distribution pole line and a customer's building, when a building is located a significant distance from the main distribution pole line and the service drop cables/wires to serve this building require additional support. The cables/wires used for telecommunications service drops for customers do not normally require conventional framing hardware or drilling of the pole for attachment. Generally a smaller and lighter cable/wire is used that can be supported by simpler hardware for attachment to the drop poles. Some drop poles are owned by utilities and some are owned by the landowner. Attachments to drop poles are usually

[3] Case 95-C-0341, In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095, Opinion No. 97-10 (issued June 17, 1977) at page 4, fn 1.

made at the time service is requested by a customer. For this reason, quick attachments are essential to serving the customer. The Attacher should ascertain who owns the drop pole and notify the Owner within 10 business days of the attachment. Owners may bill Attachers a pole attachment fee as with other pole attachments and require a license after the attachment has been made.

Owners object to this procedure saying Attachers should go through the regular licensing process in advance of attachment. Attachers point out that they may only learn about a drop pole when they visit the customer's premises to provide service. In view of the nature of drop pole attachments, the need for expeditious service outweighs the Owner's desire for the regular advance licensing process. The Owner is free to inspect the drop pole attachment and charge a rental fee for it.

Temporary Attachments, Boxing of Poles and Extension Arms

Attachers favor use of temporary attachments while most Owners oppose their use. Temporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline. The Attacher is still required to pay for all make-ready work and replace the temporary attachment with a standard attachment within 30 days of the completion of all make-ready work.

Boxing of telecommunications facilities is common around the State. Boxing involves attaching wires on opposite sides of the pole in order to meet required distances between attachments. Boxing will be allowed in cases where the cost of a conventional attachment would be exorbitant; as long as the boxing complies with safety codes and the utility practices allow boxing. Owners oppose requirements for boxing saying it should not be done for cost reasons. The Unions oppose boxing under any circumstances arguing that it may compromise worker safety. Attachers want boxing to be considered if it will expedite an attachment and/or keep costs down.

Boxing of poles owned by utilities that have a practice of boxing their poles will be allowed provided it is otherwise safe. Since it is a widespread practice, utilities that have boxed poles shall allow it for Attachers. If a utility has not allowed boxing of

its poles, boxing will not be required. We are cognizant of the safety concerns expressed by the Unions. However, since boxing is allowed by some utilities and can be implemented consistent with safety concerns, we will allow boxing when the utility practice permits it.

Extension arm brackets may be used for a permanent attachment if all safety requirements are met, if their use is consistent with utility practices and if standard attachment costs are exorbitant. Extension arms may be used on a temporary basis if a utility is unable to meet the make-ready timelines. Attachers favor the use of extension arms while most utilities oppose their use. Since they are commonly used in some areas of the State, they will be allowed as set out herein.

Overlashing

A primary Attacher is attached to a utility pole and pays rent for occupying one foot of space on the pole. Overlashing is attachment of a wire to the facility of a primary Attacher, but not to the pole itself. Under our existing orders, pole Owners may charge third party overlashers for attaching to an existing facility but not first party overlashers (a primary Attacher attaching a wire to its own facility). Since an Attacher is charged for space on the pole and the overlasher uses no additional space on the pole, our existing rule will be modified. Some cable subsidiaries of telephone companies overlash to their parents' facilities and are charged for the attachment.

Owners want to keep charging third party overlashers arguing that overlashers benefit from the attachment. However, many small telephone companies were required by the Commission to form a separate affiliate for cable operations, and it is only for that reason that the cable company is considered a third party overlasher for which Owners are charging rent.

On balance, since pole rental is paid for space occupied, third party overlashing should not be treated differently from an Attacher lashing more facilities to its own attachment, for which there is no additional charge. No additional space on the pole is used so no rental charge shall be made. Opinion 97-10 is modified accordingly on this issue.

Audits

Both Attachers and Pole Owners arguably have some inaccuracies in their records of what attachments are on the poles. In order to provide a common base line for all future pole audits, all pole Owners and Attachers shall either stipulate as to what attachments are on the poles or conduct an audit to determine what is on the poles to be completed within three years of the date this policy statement is adopted.

Owners and Attachers may choose to agree that their current records will be the baseline. Parties are encouraged to compare current records before choosing to stipulate or conduct audits. If a joint audit is conducted, it will be done at each parties own expense. After the stipulation or completion of the audit, unlicensed attachments found will result in a rate of three times the pole rental per attachment back to the date of the stipulation or audit completion date. This should both discourage unlicensed attachments and provide some compensation for the effort required to police for unlicensed attachments. Until a stipulation is made or audit is completed, provisions in existing pole attachment agreements on unlicensed attachments will remain in effect.

Owners oppose doing audits at their expense, arguing that they are only required to do audits because of the presence of Attachers' facilities on their poles. Attachers favor the audits to verify records of attachments. In view of the need for some point of agreement on lawful attachments, a stipulation or audit is necessary in order to reach a starting point for the future tracking of attachments.

Periodic Inspections

Periodic inspections are conducted to ensure that attachments comply with the National Electric Safety Code (NESC). Currently periodic inspections are conducted by Owners at the Attachers' expense under pole attachment agreements. This procedure should continue. Safety violations must be corrected within 10 days of notification. Attachers oppose paying for periodic inspections, arguing that attachments should be inspected after they are made. However, in light of limitations on utility manpower we are not requiring post construction inspections as set out below. For safety reasons, we will allow periodic inspections as they are currently conducted.

Post-construction Inspections

Attachers generally favor mandatory post-construction inspections, while utilities oppose requiring them. Because utility personnel and resources are already stretched thin by construction demands, we will encourage utilities to conduct post-construction inspections and charge the attacher for them, but we will not require such inspections.

Underground Process

The Parties agree that underground conduit Occupants shall notify conduit Owners in advance of known significant upcoming projects. Unlike aerial attachments, underground attachments require a review of Owners' records to determine where there is room for attachments. In order to make an application, Attachers must be given an opportunity to determine which conduits are full and which can accommodate their proposed attachments. The utilities shall grant reasonable access to their records for this purpose.

The timelines for surveys and make-ready work for aerial attachments will also apply to underground attachments. Some utility Owners oppose the timelines as too short for conduit surveys and make-ready work. However, timely underground attachments are as important as aerial attachments for serving customers and expanding business and we are not persuaded that different timelines should apply. Therefore, the same timelines will apply to both processes unless circumstances beyond the Owner's control, other than resource problems, arise which will excuse meeting the timelines.

To facilitate installation, Owners shall conduct safety inspections of manholes within 10 days of a request by an Attacher to enter a manhole unless the Owner can show why this is not possible, in which case inspections shall be made within 20 days. Once a safety and environmental inspection is done by the Owner for a manhole, it shall be good for 30 days provided contractors do safety inspections each time they enter the manhole. All entities entering the manhole within 30 days of the initial Owner inspection shall share the cost of the inspection.

Owners may require inspectors for work in telecommunications manholes and charge costs to Attachers. Owners may also charge Attachers for entering a manhole and for slack, since the latter takes up space in the manhole. Costs must be justified.

Standard Pole Attachment Agreement/Operating Procedures

Owners and Attachers agree that a standard pole attachment agreement used by all Owners is desirable. Owners have proposed a draft standard agreement. The agreement shall be modified to be consistent with this Order and Policy Statement and submitted to the Commission for approval within 60 days of this Order. In addition, Owners have agreed to post pole attachment operating procedures, specific to their companies, on their websites. Owners request that small companies, that may not have websites, be exempt from the posting requirement. Website posting is required for all companies, but, as always, a company may seek a waiver from the requirement for good cause. The standard agreement and operating procedures must be consistent with the Policy Statement on Pole Attachments.

Dispute Resolution Process

A Dispute Resolution Process is set out in the Policy Statement to handle pole attachment disputes that may arise in the future. The process requires some resolution at the company level before a formal complaint is filed with the Secretary to the Commission. Parties may request expedited dispute resolution in their complaint. Although parties object to some of the timetables of the process, the process is a compromise between Owners' and Attachers' positions.

CONCLUSION

The Policy Statement on Pole Attachments is a reasonable resolution of the issues on which Pole Owners and Attachers disagree and is in the public interest. The Policy Statement is hereby adopted and shall govern the relationship between attachers and utilities, unless they mutually agree otherwise, on a prospective basis.

The Commission orders:

1. The Policy Statement, attached hereto as Appendix A, is hereby adopted.

2. Pole Owners are directed to file five (5) copies of a standard Pole Attachment Agreement, consistent with this Order, within 60 days of the date of this Order.

3. This proceeding is continued.

By the Commission,

(SIGNED) JACLYN A. BRILLING
Secretary

CASE 03-M-0432

APPENDIX A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 03-M-0432 - Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues.

POLICY STATEMENT ON POLE ATTACHMENTS

Issued and Effective: August 6, 2004

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 03-M-0432 - Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues.

POLICY STATEMENT ON POLE ATTACHMENTS

I. INTRODUCTION

By Order issued March 27, 2003, the Commission instituted a proceeding directing the Office of Hearings and Dispute Resolution to establish a collaborative process to identify pole attachment issues and resolve differences among the parties as necessary. Issues to be addressed at a minimum include: attachment/occupancy practices; access to poles, ducts and conduits; make-ready costs; use of outside contractors and cost control; and limitations on particular attachments.

A collaborative process including pole Owners, Attachers, utility workers' Unions and Commission Staff was begun in July 2003. Following collaborative meetings, parties submitted a document identifying areas of agreement and disagreement, along with recommendations. Staff submitted final recommendations of unresolved issues and parties commented on those recommendations. This policy statement sets forth a resolution of pole attachment issues, as contemplated by the March 27, 2003 Order.

II. AERIAL PROCESS

A. Advance Notice

Attachers shall notify Pole Owners of known upcoming significant projects in advance of submitting applications.

B. Application Process

Applications for pole attachment licenses shall be processed by the utility pole owner within five business days of receipt. All applications shall be reviewed promptly by the pole Owners for completeness, in order to avoid miscommunications and delay. Applicants shall be notified promptly of any deficiencies. If required pre-established information is missing, the clock will not start for the pole attachment process, provided the information is reasonably available to the Attacher.

If the Owner cannot review the application within five business days and give a date to the Attacher for beginning the preconstruction survey because of multiple applications, the applicant must be contacted within the five business days and a proposed alternate schedule worked out between the parties.

The Owners' draft standard application shall be used.[1] The application field shall also include municipality/township and description of proposed attachments. If information is not available to the Attacher, it shall make that note in the application and the application will not be considered incomplete because of the omission of such information. If parties wish to work out an arrangement in which the Attacher provides more detailed information in exchange for a shorter timeline, parties are encouraged to do so.

In the case of jointly owned poles, Attachers shall apply to both Owners for licenses. The pole Owners may appoint an administrator to coordinate the attachment process. The cost of an administrator will be included in survey charges.

Proprietary information on an application shall be clearly marked "Confidential" by the party submitting it. Each Owner company shall provide a policy on its website showing how it will ensure the privacy and protection of confidential information submitted and that Attachers' confidential information is not shared with any parts of the company that would result in competitive disadvantage to the Attachers.

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[1] Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Pole Owners' Recommendations, Appendix B, Exhibits A-1 and A-2.

C. Drop Poles

There are differences between the facilities placed on drop poles and those attached to distribution poles. In order to fulfill requests for service expeditiously, Attachers need to obtain access to individual poles not previously licensed in order to meet their obligations to customers. Service or drop poles are required to support cables and wires to serve an individual premise or building when that structure is a significant distance from the main distribution pole. Service drops themselves do not normally require conventional framing hardware nor the drilling of the pole for attachments as main distribution facilities do. Installation of services requiring drop pole attachments has been performed in the past without notable incident, except pole Owners may not have been compensated for the use of their poles.

As long as the installation of service drops can be done safely and within the requirements of all relevant codes, procedures and processes, they will be allowed without prior consent and licensing.

Attachers are required to inform Owners of such attachments within 10 business days after they are made, by providing this information to a person designated by the owner by a method that assures its transmission so that the attachments become a matter of record and are counted in subsequent audits. The Attacher shall report to the owner all poles that required attachment for drops that had not been previously licensed. The Owner may require licensing after the notification and may bill the Attacher for the attachment.

D. Performance of Pre-Construction Surveys and Costs

The preconstruction survey shall be completed within 45 days of the application filing date. If the deadline is not met, an approved contractor may do the survey. The contractor may be hired by the Owner. If an Owner fails to meet a deadline and fails to hire a contractor within 45 days of the application filing date, the Attacher may hire an approved contractor. The Owner shall cooperate with the approved contractor. Attachers and Owners are encouraged to work out shorter time frames for a smaller number of attachments. The Owner may charge the Attacher for oversight

personnel to oversee a contractor's activities with notification. In addition, if an Owner is required to pay its workers overtime to meet the deadlines, the Owner shall notify the Attacher. Overtime charges may be passed along to the Attacher if the Attacher is notified and agrees to the additional charges in order to meet deadlines.

Preconstruction survey charges shall be included in an Owner's operating agreement posted on its website. Owners shall supply Attachers with all supporting work papers on request. If there is evidence of double collection, it will be corrected. Owners may make changes in all charges once each year on 30 days notice.

E. Make-ready Estimates

Owners shall submit make-ready estimates to Attachers within 14 days of completion of the survey. If such estimate is not provided to an Attacher within that time, any delay will be subtracted from the pole Owner's time frame for completion of make-ready work.

Make-ready estimates shall be detailed and subject to discussion as to the reasonableness of what make-ready work is necessary. The parties shall attempt in good faith to work out any disagreements before seeking Dispute Resolution from the Commission. However, unit costs are not subject to negotiation.

F. Make-ready Charges

Attachers must pay for make-ready charges within 14 days of receiving the estimate. Make-ready work must be completed within 45 days of the date payment is received by the Owner.

Loaded labor rates may vary for legitimate reasons. Detailed work-papers on how the rate is developed shall be made available to the Attachers on request.

Double collection of expenses is not justified. Make-ready charges shall be in each Owner's operating agreement and posted on its website. All supporting documents shall be given to Attachers on request. Specific complaints may be brought to the Commission for resolution by filing a request for Dispute Resolution.

Pole Owners may change make-ready charges once each year with 30 days notice. Regardless of when rate schedules have changed, make-ready estimates are binding for 60 days.

The make-ready invoice shall include at a minimum: date of work, description of work, location of work, unit cost or labor cost per hour, cost of itemized materials and any miscellaneous charges.

Owners shall notify Attachers within three business days of the completion of make-ready work. A rolling release procedure is encouraged.

G. Rearrangements

A party already attached to the pole shall not pay rearrangement costs required for subsequent Attachers. If party A's attachment causes a non-compliant condition that must be corrected subsequently, party A shall pay for the rearrangement to correct such condition. If party B (including the pole Owner), an Attacher subsequent to A, is unable to attach without rearrangement of other attachments, party B shall pay all rearrangement costs.

H. Temporary Attachments

Temporary attachments, which are made for emergency and rebuild/upgrade processes, may also be made for the installation of facilities to compensate for delays in make-ready and other impediments to accessing poles.

The methodology used for temporary attachments must be cognizant of all relevant safety requirements and the equipment used must be manufactured and intended for the application.

If temporary attachments are used, Attachers are still required to pay for all make-ready work necessary for the permanent attachment. Make-ready work on poles with temporary attachments shall be completed within a reasonable time. When make-ready work is completed, the temporary attachments shall be replaced with standard attachments within 30 days.

I. Boxing

Boxing of a pole involves attaching wires on opposite sides of the pole in order to meet required distances between attachments. The practice is employed in order to save space in attaching facilities to utility poles. Boxing of telecommunications facilities is a relatively common practice used by some Pole Owners but not by others. Some advantages of boxing of poles may be avoidance of high make-ready costs, pole replacement, and/or saving time and expediting construction.

Boxing of poles should be allowed in certain circumstances recognizing that such attachments need to be in compliance with relevant safety codes. Boxing of poles is not the first choice to be used when any make-ready work is required. On the contrary, all facility operators have expressed preference for conventional attachments with all facilities on one side of the pole, if this can be accomplished without exorbitant costs.

There are many factors to consider when deciding whether to employ boxing techniques and it is difficult to prescribe specific conditions that can be applied universally. The determination of boxing shall be done on a case by case basis. The basis for boxing is best determined during surveys of facilities when the representatives surveying the poles are in a good position to weigh all options and costs for the attachment. If the cost for a conventional attachment is exorbitant, boxing may provide an alternative means of attachment. Boxing shall only be considered on a pole if the pole can be safely accessed by ladders, bucket trucks, or emergency equipment, so that worker safety is not compromised.

If a utility currently does not allow boxing of its poles, this provision will not require boxing.

J. Extension Arms

Extension arm brackets are commonly used in many areas of the State. Extension arms may be an appropriate method of attachment for both permanent installations, when make-ready costs are exorbitant, and/or on a temporary basis when make-ready work cannot be performed in a timely manner. Temporary extension arms

shall be allowed and their removal shall be required within 30 days after make-ready work is completed.

A determination of whether extension arms may be used safely is best made during the pre-construction survey of the pole line facilities in advance of licensing. During the pre-construction survey, determinations are made concerning the specific arrangements for attachments. That review shall give consideration to the permanent use of extension arms when exorbitant make-ready costs are identified and use of an extension arm allows for safe and reliable attachments. During the pre-construction survey and subsequent design and assessment of the make-ready work, the scale and time requirements of the make-ready work become apparent. If it is anticipated that the pole Owners will not be able to make the poles ready within the time frame prescribed, allowances for temporary attachment employing extension arms, in compliance with relevant codes, shall be made. Allowing temporary attachments to poles in this manner provides pole Owners some relief from the immediate demands of the make-ready workload.

K. Power Supplies

Power supplies shall be installed in a safe, reliable, and practical manner. Equipment placement shall be determined during the initial make-ready survey or subsequent reviews for the power supply. Power supplies shall be installed in compliance with relevant safety codes giving consideration to the needs of all Attachers.

L. Standards

The general standards prescribed by the National Electric Safety Code (NESC) and conventional manuals of construction practices and procedures cover most situations regarding the safe and reliable installation and operation of telecommunications facilities. NESC is a minimum safety standard. Some pole Owners may impose standards that are stricter than NESC. If an Attacher questions a stricter standard, Owners shall explain why they have adopted a stricter practice than NESC. If facility operators (including pole Owners and Attachers) require unique conditions, that can be

justified, special consideration of such prescriptions shall be made known to all parties and included in the standard procedures.

M. Post-Construction Inspections

Pole Owners may choose to perform post construction inspections within 30 days after completion of construction and charge Attachers for such inspections. If an Owner plans to do a post construction inspection, it shall notify Attachers of when inspections will be done so that Attachers may participate. However, through mutual agreement of the parties, Attachers may perform post construction inspections within 30 days after completion of construction and avoid the inspection fee.

If an Attacher conducts a post-construction inspection, it shall notify the owner. A pole Owner will have 30 days after receiving the notification to perform any review it wishes to undertake to ensure compliance such as a statistical sample.

If any violations are found by the Owner after attachment, the Attacher must correct the violation immediately and pay the Owner's cost of inspection. If a violation is not corrected within 30 days, the Owner may correct the violation at the Attacher's expense. Parties may agree to different terms, but this will serve as a default if parties do not agree.

N. Overlashing

Pole Owners and Attachers are obligated to install and operate their facilities in compliance with all relevant safety codes. Pole Owners and Attachers shall notify each other of major pole line work projects, such as overlashing, to avoid conflicts in crews trying to access the pole's work space. Notices of such projects shall be forwarded to designated liaisons for Attachers and Pole Owners as soon as the work dates are known. The date the information is provided will serve as a reservation to the first entity posting its intention of working in the area, respectful of emergency situations.

All Attachers shall notify Pole Owners of any overlashing activity when work dates are known. A predetermined, limited amount of overlashing, that is not a substantial increase to the existing facilities, shall be allowed. Typically, a fiber cable overlashed to an existing coaxial cable facility with a common trunk and feeder cable

configuration adds very little to the existing facility's overall weight and bundle diameter. Consequently there is little concern about ice and wind loading.

An analysis shall be conducted by the primary Attacher whose facilities are being overlashed. That analysis shall assure that the primary facilities and those overlashed are in compliance with the NESC.

An Attacher, whose facility has a pre-existing NESC calculated span tension of no more than 1,750 lbs., shall be allowed to overlash a pre-determined maximum load of not more than 20% to the existing communications facility. Existing facilities with an NESC calculated span tension of less than 1,000 lbs. shall be allowed a pre-determined overlash of up to 40% of such pre-existing facilities.

When the analysis determines that the addition of equipment and loading is greater than the pre-determined limits, further assessment of the overlashed facility for its impact on the overall pole loading is required to assure that poles limits are not exceeded. The Attacher shall provide the pole Owner with a "worst case" pole analyses from the area to be overlashed, to be sure the additional facilities will not excessively burden the pole structures. This information is important to the pole Owner for future attachment applications and engineering.

Overlashed facilities that are added to an already licensed pole attachment do not place any additional space requirements on a pole and therefore shall not be considered an additional and separate attachment. Overlashed and third party overlashed facilities need to be installed respectful of relevant codes and guidelines. The pole Owner may not charge for overlashed equipment, except for any make-ready charges. Opinion No. 97-10 is modified to the extent required on this issue.

The overlashing of cables by third party facility operators may require the same considerations as those for first party overlashers. As with first party overlashing, all facility operators shall be informed of any substantial work project to avoid conflicts in the work space. It is unnecessary to detail the exact nature of the facilities being installed. However, the relative size and weight of the equipment shall be disclosed to

allow engineering analysis for space and weight issues. All overlashed facilities shall be in compliance with NESC.

O. Audits

In order to provide a common base line for all future pole audits, all pole Owners and Attachers shall either stipulate as to what attachments are on the poles or conduct an audit to determine what attachments are on the poles to be completed within three years of the date this policy statement is adopted.

Owners and Attachers may choose to simply agree that their current records will be the baseline. Parties are encouraged to compare current records before choosing whether to stipulate or to conduct audits. If a joint audit is conducted it will be done at each parties own expense. After the stipulation or audit is completed, unlicensed attachments found will result in a rate of three times the pole rental per attachment back to the date of the stipulation or audit. Until a stipulation is made or an audit completed, provisions for unlicensed attachments in pole attachment agreements will remain in effect.

P. Billing Invoices

The audit and/or stipulation outlined above shall eliminate billing disagreements on a going forward basis as all attachments will be stipulated. Parties shall develop procedures for tracking and recording subsequent attachments. However, the ultimate responsibility for billing is on the utility to prove an amount is owed. The Attacher is required to maintain records in order to verify bills. The data base shall, at a minimum, identify pole number and municipality, and indicate if a pole is wholly or jointly owned, in such a way that each pole is uniquely identified. A single custodian for issuing invoices for jointly owned poles is encouraged but not required.

Q. Periodic Inspect

Periodic inspections of poles for compliance with the NESC may be done at the expense of the Attacher if so provided for in the pole attachment agreement. Serious violations shall be corrected within 10 days of notification.

All facility operators shall designate a means by which they wish to receive electronic notification of pole attachment issues.

III. UNDERGROUND PROCESS

A. Advance Notice of Application and Process

Underground Occupants shall notify conduit Owners of known significant upcoming projects in advance of submitting an application. The application process shall be the same as that set out for the Aerial process.

B. Pre-Installation Inspections

Attachers shall have access to conduit records, with any necessary redactions, at the Owner's office.

Time tables for underground surveys shall be the same as for overhead installation surveys. If an Owner is unable to meet a timetable for the survey, Occupants may use employees or contractors approved by the Owner, except as provided below.

Owners shall make safety inspections of a manhole within 10 days of a request by an Attacher to enter a manhole unless they can demonstrate why it is not possible. All Owners shall work toward providing inspections within the 10-day time frame. In any case, inspections shall be done within 20 days.

Safety and environmental inspections shall be good for 30 days, provided contractors working in manholes are trained to do safety inspections each time they enter the manhole. Costs of the initial inspection by the owner shall be shared by all entities entering the manhole during the 30-day period.

C. Make-ready Work

Make-ready work includes: physical inspection and verification of availability for use, rodding and roping, brushing, installation of inner-duct and installation of fiber optic cable. Owners agree that installation of inner-duct and fiber optic cable may be performed by the Attacher. While Con Edison allows Attachers to perform some of the other functions, utilities without training programs, do not. Work that may only be performed by the Owner's employees or its qualified contractors include: preliminary inspections, environmental clean up, electrical repairs and

inspections. The Owner may charge the Attacher only for work required by the needs of the Attacher.

The same timetable as for overhead make-ready work will apply to the underground process. Approved contractors shall be hired if timetables are not met. However, circumstances beyond the owner's control, other than resource problems, will excuse meeting the timetable. Non-payment of charges will also stop the clock for meeting timetables.

Make-ready estimates shall be binding within a certain range, specified by the parties, and then be trued up to actual costs within the range. If extraordinary, unforeseen circumstances occur, the owner may seek relief through the Commission's dispute resolution services.

D. Inspectors

Each Owner shall provide the charges for electric manhole inspectors in its operating agreement to be posted on its website. Owners shall provide Attachers with all supporting work papers for the charges, on request.

If Owners determine that inspectors are necessary for telecommunication manholes, the reasonable cost of inspectors shall be paid by the Attacher. Owners shall provide cost support for such charges.

E. Slack

A conduit Owner may charge an Occupant for slack.

F. Standard Procedures

Owners shall develop standard procedures for all Occupants, as appropriate. Deviation from standard procedures shall be justified.

G. Point of Entry

A charge for entering a manhole is acceptable if cost justification is provided by the Owner.

IV. STANDARD AGREEMENT; OPERATING PROCEDURES; ATTACHER AND CONTRACTOR QUALIFICATIONS; AND WORKING GROUP

A. Standard Terms and Conditions

Owners shall develop standard terms and conditions for pole attachment agreements that apply to all Owners and Attachers. A standard agreement shall be approved by the Commission. The agreement will be effective for all current and future Attachers.

Substantive amendments to the standard agreement shall be filed with the Commission. However, the standard agreement may have additional terms negotiated between the parties. Agreements with additional terms shall be filed with the Commission for information only. Terms available to one party shall be available to all. If parties object to an amendment, they may seek review from the Commission.

B. Operating Procedures

The Standard Pole Attachment Agreement shall provide all general terms, conditions and procedures that apply to pole attachments. The Operating Procedures will provide specific details unique to each company. Changes to Operating Procedures shall be made on 30 days written notice, with Dispute Resolution for disputes. Parties will be expected to follow and adhere to operating procedures.

C. Licensee and Contractor Qualifications

Each Owner shall provide a list of qualified local contractors to be used by it or by Attachers for survey, pole, and conduit work. The list shall be given to Attachers along with Operating Procedures on request. If an attacher wishes to employ a contractor not on the list, the Attacher shall submit the contractor's qualifications to the Owner for approval as a qualified contractor.

D. Working Group

A working group to discuss ongoing pole attachment issues is desirable.

V. EXPEDITED DISPUTE RESOLUTION ("EDR")

A dispute shall be discussed at the intermediate level in a company for 10 days before going to the Company Ombudsman. The dispute shall remain with the Ombudsman for 12 days before being taken to the Commission for Dispute Resolution.

A. EDR Process at the Commission

An initial filing for Dispute Resolution shall be sent to the Secretary of the Commission.

B. Pendency

Disputed work shall continue to the extent possible during a dispute. Where the dispute is over cost, the work shall continue as long as the Attacher pays 50% of the total amount of the disputed invoice(s). Payment of the disputed invoices shall note that they are being paid under protest and subject to reconciliation following resolution of the dispute. If the dispute is over the form or location of the attachment or the use of a temporary attachment, it is not expected that the disputed work will continue.